

MAIL TO:

STATE OF UTAH
 DIVISION OF PURCHASING
 3150 STATE OFFICE BUILDING, STATE CAPITOL
 P.O. BOX 141061
 SALT LAKE CITY, UTAH 84114-1061
 TELEPHONE (801) 538-3026
<http://purchasing.utah.gov>

Request for ProposalSolicitation Number: **NO5537**Due Date: **12/16/04 at 3:00 P.M.**

Date Sent: December 1, 2004

Agency Contract

Goods and services to be
 purchased:

AGENCY CONTRACT - FOOD CONCESSION IN NATURAL RESOURCES BUILDING**Please complete**

Company Name		Federal Tax Identification Number	
Ordering Address	City	State	Zip Code
Remittance Address (if different from ordering address)	City	State	Zip Code
Type <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government	Company Contact Person		
Telephone Number (include area code)	Fax Number (include area code)		
Company's Internet Web Address	Email Address		
Discount Terms (for bid purposes, bid discounts less than 30 days will not be considered)	Days Required for Delivery After Receipt of Order (see attached for any required minimums)		
<p>The following documents are included in this solicitation: Solicitation forms, instructions and general provisions, and specifications. <u>Please review all documents carefully before completing.</u></p> <p>The undersigned certifies that the goods or services offered are produced, mined, grown, manufactured, or performed in Utah. Yes ____ No _____. If no, enter where produced, etc. _____</p>			
Offeror's Authorized Representative's Signature		Date	
Type or Print Name		Position or Title	

**STATE OF UTAH
DIVISION OF PURCHASING**

Request for Proposal

Solicitation Number: NO5537

Due Date: 12/16/04

Vendor Name:

**AGENCY CONTRACT - FOOD CONCESSION IN NATURAL RESOURCES BUILDING AT 1594 WEST NORTH TEMPLE, SALT LAKE CITY, UT.,
PER THE ATTACHED SPECIFICATIONS.**

QUESTIONS ON SPECIFICATIONS CALL BRENDA VELASQUEZ AT (801) 538-7206.

QUESTIONS ON PURCHASING PROCESS (NOT RELATED TO SPECIFICATIONS) CALL NANCY ORTON AT (801) 538-3148.

RX: 560 50000000008

COMMODITY CODE(S): 96115, 96140 AND 96219

REQUEST FOR PROPOSAL - INSTRUCTIONS AND GENERAL PROVISIONS

1. PROPOSAL PREPARATION: (a) All prices and notations must be in ink or typewritten. (b) Price each item separately. Unit price shall be shown and a total price shall be entered for each item bid. (c) Unit price will govern, if there is an error in the extension. (d) Delivery time of services and products as proposed is critical and must be adhered to. (e) All products are to be of new, unused condition, unless otherwise requested in this solicitation. (f) Incomplete proposals may be rejected. (g) This proposal may not be withdrawn for a period of 60 days from the due date. (h) Where applicable, all proposals must include complete manufacturer's descriptive literature. (i) By signing the proposal the offeror certifies that all of the information provided is accurate, that they are willing and able to furnish the item(s) specified, and that prices offered are correct.

2. SUBMITTING THE PROPOSAL: (a) The proposal must be signed in ink, sealed, and if mailed, mailed in a properly-addressed envelope to the DIVISION OF PURCHASING, 3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061. **The "Solicitation Number" and "Due Date" must appear on the outside of the envelope.** (b) Proposals, modifications, or corrections received after the closing time on the "Due Date" will be considered late and handled in accordance with the Utah Procurement Rules, section 3-209. (c) **Your proposal will be considered only if it is submitted on the forms provided by the state. Facsimile transmission of proposals to DIVISION will not be considered.** (d) All prices quoted must be both F.O.B. Origin per paragraph 1.(c) and F.O.B. Destination. Additional charges including but not limited to delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose must be included in the proposal for consideration and approval by the Division of Purchasing & General Services (DIVISION). Upon award of the contract, the shipping terms will be F.O.B. Destination, Freight Prepaid with freight charges to be added to the invoice unless otherwise specified by the DIVISION. No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, costs of bonds, or for any other purpose will be paid by the state unless specifically included in the proposal and accepted by DIVISION. (e) By signing the proposal the offeror certifies that all of the information provided is accurate and that he/she offers to furnish materials/services for purchase in strict accordance with the requirements of this proposal including all terms and conditions.

3. SOLICITATION AMENDMENTS: All changes to this solicitation will be made through written addendum only. Bidders are cautioned not to consider verbal modifications.

4. PROPRIETARY INFORMATION: Suppliers are required to mark any specific information contained in their bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any proposal will not be considered proprietary. All material becomes the property of the state and may be returned only at the state's option. Proposals submitted may be reviewed and evaluated by any persons at the discretion of the state.

5. BEST AND FINAL OFFERS: Discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements. Prior to award, these offerors may be asked to submit best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by a competing offeror.

6. SAMPLES: Samples, brochures, etc., when required, must be furnished free of expense to the state and if not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the offeror's expense.

7. DIVISION APPROVAL: Contracts written with the State of Utah, as a result of this proposal, will not be legally binding without the written

approval of the Director of the DIVISION.

8. AWARD OF CONTRACT: (a) The contract will be awarded with reasonable promptness, by written notice, to the lowest responsible offeror whose proposal is determined to be the most advantageous to the state, taking into consideration price and evaluation factors set forth in the RFP. No other factors or criteria will be used in the evaluation. The contract file shall contain the basis on which the award is made. Refer to Utah Code Annotated 65-56-21. (b) The DIVISION can reject any and all proposals. And it can waive any informality, or technicality in any proposal received, if the DIVISION believes it would serve the best interests of the state. (c) Before, or after, the award of a contract the DIVISION has the right to inspect the offeror's premises and all business records to determine the offeror's ability to meet contract requirements. (d) The DIVISION will open proposals publicly, identifying only the names of the offerors. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the due date. After the due date, a **register** of proposals shall be established. The **register** shall be open to public inspection, but the proposals will be seen only by authorized DIVISION staff and those selected by DIVISION to evaluate the proposals. The proposal(s) of the successful offeror(s) shall be open for public inspection for 90 days after the award of the contract(s). (e) Utah has a reciprocal preference law which will be applied against bidders bidding products or services produced in states which discriminate against Utah products. For details see Section 63-56 20.5 -20.6, Utah Code Annotated.

9. ANTI-DISCRIMINATION ACT: The offeror agrees to abide by the provisions of the Utah Anti-discrimination Act, Title 34 Chapter 35, U.C.A. 1953, as amended, and Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities. Also offeror agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the workplace. Vendor must include this provision in every subcontract or purchase order relating to purchases by the State of Utah to insure that the subcontractors and vendors are bound by this provision.

10. WARRANTY: The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah applies to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgement to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

11. DEBARMENT: The CONTRACTOR certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared

ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE.

12. GOVERNING LAWS AND REGULATIONS: All State purchases are subject to the Utah Procurement Code, Title 63, Chapter 56 Utah Code Annotated 1953, as amended, and the Procurement Rules as adopted by the Utah State Procurement Policy Board (Utah Administrative Code Section R33). These are available on the Internet at www.purchasing.utah.gov.

(Revision 14 Mar 2003 - RFP Instructions)

REQUEST FOR PROPOSAL
Food Concession Services
Solicitation # NO5537

PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The purpose of this request for proposal is to enter into a contract with a qualified firm to provide an on-site retail food service for the Department of Natural Resources building employees and visitors. It is anticipated that this RFP may result in a contract award to a single contractor. The Department will provide the space and fixtures at no charge, and will not be asking for any of the proceeds. There is no guarantee that any contract will be awarded.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

BACKGROUND

The Department of Natural Resources is located at 1594 West, North Temple. The building houses approximately 450 employees. Within 5 minutes walking distance of the building there is a wide variety of fast food operations and restaurants. Employees also order in food from various establishments. We have had a concessionaire before but have no usage figures from that vendor.

ISSUING OFFICE AND RFP REFERENCE NUMBER

The State of Utah Division of Purchasing is the issuing office for this document and all subsequent addenda relating to it, on behalf of Department of Natural Resources. The reference number for the transaction is Solicitation # NO5537. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

SUBMITTING YOUR PROPOSAL

One original and 6 identical copies of your proposal must be received at the State of Utah Division of Purchasing, 3150 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, prior to the closing date and time specified. Proposals received after the deadline will be late and ineligible for consideration.

LENGTH OF CONTRACT

The Contract resulting from this RFP will be for a period of 1 year, with a 60 day right to terminate clause for either party with cause. The contract may be extended beyond

the original contract period year-to-year for up to five additional years (at the State's discretion and by mutual agreement)

PRICE GUARANTEE PERIOD

All pricing must be guaranteed for *1 year*. Following the guarantee period, any request for price adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the contract will not be effective unless approved by the State Director of Purchasing. The State will be given the immediate benefit of any decrease in the market, or allowable discount.

STANDARD CONTRACT TERMS AND CONDITIONS

Any contract resulting from this RFP will include the State's standard terms and conditions. These may be accessed at:

<http://www.purchasing.utah.gov/contractinfo/TermsAgency.pdf>

QUESTIONS

All questions must be submitted in writing and may be submitted to Brenda Velasquez, via email at: brendavelasquez@utah.gov or via fax at: (801) 538-7213. Questions are due by 5:00 p.m. on December 13, 2004. Questions received after that date may not be answered. Answers will be given via an addendum posted on the Division of Purchasing website.

DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION)

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the Offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offeror's expense. The selection process may include a narrowing of applicants to two final applicants. As part of the selection process the top applicant may be required to provide food services for a three month trial period. At the end of the trial period, if services are successful, a contract will be awarded. If services are not acceptable, Natural Resources reserves the right to bring in the 2nd ranked applicant to provide services. This process will continue until a successful applicant is determined.

PROPRIETARY INFORMATION

The proposal of the successful offeror(s) becomes public information. Proprietary information can be protected under limited circumstances such as client lists and non-

public financial statements. Pricing and service elements are not considered proprietary. An entire proposal may not be marked as proprietary. Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected. The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of Utah and may be returned only at the State's option.

DETAILED SCOPE OF WORK

1. Provide a food service operation for the Department of Natural Resources (DNR) building employees and visitors (approximately 450 people). The Department of Natural Resources will provide a room and equipment at no charge to the chosen vendor. Minimum hours of operation to be from 10:30 a.m. to 2:00 p.m., Monday through Friday, except on official State Holidays. Contractor may be asked (not required) to provide limited catering to business meeting and/or conferences. Lunch menu is to be provided as well as some snack type foods and beverages.

2. Vendor must maintain Department provided concession area and equipment in a sanitary manner at all times. Operations must meet DNR management's standards for cleanliness. All floors, counter and equipment must be cleaned at least once a day. Vendor will be subjected to periodic inspections. Vendor will be required to clean and maintain grease traps at their own expense on a regular basis as needed but not less than every 6 months. Vendor must provide all staff for the operation. All persons handling food must have a food handlers permit and follow proper sanitary procedures in connection with handling food, ie: Always washing hands before handling food, proper use of gloves if they are used, etc. There must be a serve-safe certified person in operation. No old food will be stored or left in concession area. Vendor is to inspect the facility before submitting a proposal. Site visits are to be scheduled with Brenda Velasquez ph: 801-538-7206 between the hours of 8:00 am to 5:00 pm., no later than December 13, 2004.

3. Equipment provided by the Department includes a cash register and stand, three compartment sink, 2 warm food pots, ice maker, ice bin and small sump pump for ice machine, microwave, counter top food warmer, hot dog grille, portable salad bar w/under shelf 4 doors and sneeze guard, four shelf storage rack, 48" 12 pan sandwich prep cooler, 9' stainless steel counter with 2 shelves and stainless doors. Equipment and space made available for use of the vendor by the Department will remain the property of the Department and shall not be damaged or removed. Any/and all damage and repairs to equipment or the facility not due to normal wear will be paid for by the vendor. All additional equipment or additions must have approval of the Department.

4. Vendor shall be responsible for all liability, wages and costs involved in the operation of the food service. Vendor will maintain all insurance coverage for

employees under its employ, this must include workers compensation insurance. Vendor shall also have \$1 million in liability insurance for the operation itself and provide a copy of said policy to the Department. Vendor will also be responsible for all sales tax.

5. Vendor will be required to pay a \$350.00 cleaning deposit upon being awarded the contract. This deposit will be refundable if facility is left at the end of contract in the same condition as it was before.

PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS

Must provide a business plan which should include:

1. Company food handling requirements
2. Clean-up procedures
3. Employee training required.
4. Copy of serve-safe certification
5. Sample copy of proposed menu items and pricing
6. Safety practices manual
7. Brief history
8. Financial statement
9. Three references (include phone numbers and addresses)
10. Must be prepared to supply a sampler of 2-3 of the menu items to The Department committee at 1594 West North Temple on December 21, 2004 at 1:30 if offer is acceptable. If offer is found to be unacceptable you will be notified by end of day December 20, 2004
11. Department representative may wish to inspect your current facility at our discretion

PROPOSAL RESPONSE FORMAT

- I. Letter of Transmittal. The letter of transmittal should include an introduction of the offeror's company, the name, address, and telephone number of the person to be contacted, along with others who are authorized to represent the company in connection with this RFP.
- II Executive Summary. An executive summary which briefly describes the offeror's approach to the proposal and clearly indicates any options or alternatives. It should also indicate any major requirements that cannot be met by offeror. This summary should also highlight the major features of the proposal and identify any supporting information considered pertinent. In short, the reader should be able to determine the essence of the proposal and generally how well it meets the requirements by reading the executive summary.
- II Detailed Discussion. This should be a basic business plan complete with estimate of concession investment, source of funding, time table for

implementation, and, menu selections that you propose to offer as well as pricing for those items. Also to be included would be your willingness to offer catering to meetings, and if so what would be available ie: doughnuts, muffins sandwiches, etc. This section should constitute the major portion of the proposal and must contain at least the following information:

- A. A general but complete narrative overview of the offeror's assessment of the work to be performed and the ability to meet those aims, along with the resources necessary to meet the requirements of the RFP. This overview should clearly demonstrate the offeror's understanding of the desired overall performance expectations as well as how well it will meet the requirements.
- B. A specific response to each requirement listed in the Scope of Concessionaire Services..
- C. Each offeror shall provide the following information:

Financial Statement - A full and detailed presentation of offeror's assets, liabilities and net worth. If any part of the assets are pledged as security for any debt, explain. Furnish names of principal stockholders along with number of shares held by each.

Statement of General Business History - A statement of all important business activity of offeror's business life, emphasizing offeror's experience in the operation of related activities. Include information pertaining to location of business, size of company, any history of bankruptcy or involvement with litigation. Describe any convictions, fines, misdemeanor or felony charges. A full disclosure is advantageous and does not constitute automatic disqualification.

Business References - A minimum of three (3) business references giving names, addresses, and telephone numbers.

PROPOSAL EVALUATION CRITERIA

A committee will evaluate proposals against the following weighted criteria. Each area of the evaluation criteria must be addressed in detail in proposal.

- 1- Cleanliness and food handling procedures (30 points)
- 2- General Operating procedures (25 points)
- 3- Plan for this operation (25 points)
- 4- Financial Strength (10 Points)
- 5- Reference checks (10 points)

**BUILDING FOOD CONCESSIONAIRE SERVICES
SOLICITATION # N05537
RFP EVALUATION SCORESHEET**

Date: _____

Firm Name: _____

Evaluator: _____

Score will be assigned as follows:

0 = Failure, no response

1= Poor, inadequate, fails to meet requirement

2= Fair, only partially responsive

3= Average, meets minimum requirement

4= Above average, exceeds minimum requirement

5= Superior

	Points possible	Score	Weight (0-5)	Points
1. Cleanliness (30 points possible)				
Food Handling Policy	10 points possible.		X 2	
Cleanliness Policy	10 points possible		X 2	
Serve-safe certification	10 points possible		X 2	
2. General Operation (25 points possible)				
Longevity of Operation	5 points possible		X 1	
Employee Training	10 points possible		X 2	
Safety Practices	10 points possible		X 2	
3. Plan for Operation (25 points possible)				
Pricing of Products	5 points possible		X 1	
Quality of Food	10 points possible		X 2	
Variety of Menu Items	10 points possible		X 2	
4. Financial Strength (10 points possible)	10 points possible		X 2	
5. Reference Checks (10 points possible)	10 points possible		X2	
TOTAL EVALUATION POINTS	100 POINTS POSSIBLE			TOTAL

ATTACHMENT A: STANDARD TERMS AND CONDITIONS

AUTHORITY: Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.

CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE: The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

LAWS AND REGULATIONS: Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

RECORDS ADMINISTRATION: The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

CONFLICT OF INTEREST: Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

CONTRACTOR, AN INDEPENDENT CONTRACTOR: The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

INDEMNITY CLAUSE: The Contractor agrees to indemnify, save harmless, and release the State OF UTAH, and all its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

EQUAL OPPORTUNITY CLAUSE: The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

RENEGOTIATION OR MODIFICATIONS: This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.

DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the

State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.
15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.
16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.
17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.
18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.
19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.
20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.
21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.
22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.
24. **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).
25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)